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C O N F I D E N T I A L SECTION 01 OF 04 NAIROBI 000413

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [KE](#)
SUBJECT: UN SPECIAL RAPPORTEUR CRITICIZES GOK ON
EXTRAJUDICIAL KILLINGS

REF: A. NAIROBI 369
[1](#)B. 08 NAIROBI 2865
[1](#)C. 08 NAIROBI 2551
[1](#)D. 08 NAIROBI 2401
[1](#)E. 08 NAIROBI 2253
[1](#)F. 08 NAIROBI 1328

Classified By: Ambassador Michael E. Ranneberger for reasons 1.4 (B and D)

SUMMARY

[1](#)1. (C) On February 25, the UN Special Rapporteur for Extrajudicial Killings (the Special Rapporteur), Philip Alston, issued a preliminary report of his ten-day visit to Kenya where he noted that extrajudicial killings by police were "systematic, widespread, and carefully planned". During his visit, Alston focused on three issues: extra-judicial killings during the post-election violence in Eldoret and Kisumu; the Mt. Elgon conflict; and killings of, and by, Mungiki adherents in Central Province and Nairobi. Alston's report concluded that police are a law unto themselves, with little or no accountability, and that extrajudicial killings by police are a matter of policy, "directed from the top". Alston called on President Kibaki to fire Police Commissioner Hussein Ali. He criticized the police and the Kenyan Ministry of Defense for a failure to investigate "utterly credible" NGO reports of extrajudicial killings in the Mt. Elgon conflict. Alston described the Kenyan judicial system as irretrievably broken and called for the resignation of Attorney General Amos Wako, who he termed, "the personal embodiment... of impunity." Alston's report backed the establishment of a Special Tribunal, as previously recommended by the Waki Commission to hold accountable perpetrators, financiers, and organizers of post-election violence (reftels B, C, and D), but also called on the International Criminal Court prosecutor to commence investigations of the "big fish."

[1](#)2. (C) Alston will present his final report to the UN Human Rights Council (HRC) in June. However, he told the Ambassador that it was unlikely to be debated, given the ineffectiveness of the HRC. Alston also expressed his hope that donor countries, and particularly the U.S., would use the report to pressure the GOK to undertake needed reforms to end impunity. Overall, we support the conclusions of the Special Rapporteur, although we have reservations about the efficacy of publicly calling for dismissals of Ali and Wako. Foolishly, the GOK Spokesman issued a statement rejecting Alston's report. On February 26, the Ambassador signed a joint heads of mission statement and participated in a press conference with 12 other Heads of Diplomatic Missions

supporting Alston's report and calling on the GOK to establish the Special Tribunal of Kenya (Reftel A). The GOK then subsequently somewhat altered course, saying it will seriously review the report. We will continue to reach out to the highest levels of the GOK to push for police reform and an end to impunity. End Summary.

GOK GRANTS PERMISSION, THEN STONEWALLS

¶3. (C) The UN Special Rapporteur for Extrajudicial Killings, Philip Alston, arrived in Kenya on February 16 for a ten-day visit. Alston requested permission to visit Kenya in 2005, but the GOK only approved the visit in July 2008. Alston told us he thought that the scale of post-election violence brought pressure on the GOK to respond to the long-standing request. (Comment: Internal GOK politics also likely played a role. Minister of Justice Martha Karua - who pushed the invitation through Cabinet - has presidential ambitions in ¶2012. Karua shrewdly calculated that Alston's focus on post-election violence and Mungiki killings by police would likely discredit key political rivals; including Minister of Internal Security and Provincial Administration George Saitoti; Deputy Prime Minister/ Minister of Finance Uhuru Kenyatta; and Minister of Agriculture William Ruto. Saitoti has political responsibility for police, while Kenyatta and Ruto allegedly have been implicated in organizing post-election violence. End Comment).

¶4. (U) Alston focused on three issues during his visit:

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extrajudicial killings during the post-election violence in Eldoret and Kisumu; the Mt. Elgon conflict; and killings of, and by, Mungiki adherents in Central Province and Nairobi. During the visit, Alston and his team of two researchers took testimony from over 100 witnesses to, or family of victims of, extrajudicial killings. At each location, Alston met with provincial administration and police officials. In Nairobi, Alston met with high-level officials of the Ministry of Internal Security and Provincial Administration, the Ministry of Defense, and the Ministry of Justice, National Cohesion and Constitutional Affairs to discuss the GOK's response to extrajudicial killings. He was unable to meet with Attorney General Amos Wako, but he met the Chief of the Department of Public Prosecutions and the Chief Justice of Kenya instead.

¶5. (C) Alston told us that the government had stonewalled his attempts to get information. Alston called the GOK "by far the most uncooperative government" he had encountered in his nine country visits as Special Rapporteur. He stated that despite multiple, specific requests for information from police and judicial authorities, the government provided almost no information to demonstrate it had made any efforts to investigate, or hold accountable those deemed responsible for, extrajudicial killings. Alston stated that the government's lack of cooperation made it very difficult for him to produce a balanced report, since he had received testimony from numerous, credible witnesses and also received credible reports from NGOs regarding extrajudicial killings by police during post-election violence and Mungiki killings, and by police and military during the Mt. Elgon operation.

POLICE KILLINGS: SYSTEMATIC AND WIDESPREAD

¶6. (U) Alston's report found "systematic, widespread, and carefully planned extrajudicial killings undertaken on a regular basis by the Kenyan police." Alston roundly condemned the police for its lack of internal accountability, concluding that Kenyan police are a law unto themselves. He noted that extrajudicial killings were only investigated if caught by television cameras or, as in the recent case when the son of an ex-MP was gunned down by an officer, if the

victim has political connections. When he met with Police Commissioner Hussein Ali, Ali flatly denied that extrajudicial killings occurred in Kenya, despite the fact that both the Minister and the Permanent Secretary for Internal Security and Provincial Administration, had admitted to Parliament that police had engaged in extrajudicial killings.

NO INVESTIGATION OF KILLINGS IN MT. ELGON OPERATION

17. (C) Alston's report finds that the Sabaot Land Defense Force (SLDF), a militia which opposed a government land settlement scheme in Mt. Elgon that terrorized the local population from 2006 - 2008, committed extrajudicial killings. Alston found credible evidence that police and military had engaged in extrajudicial killings during their joint security operation on Mt. Elgon to defeat the SLDF in March and April 2008. However, Ministry of Internal Security and Ministry of Defense officials had failed to investigate allegations contained in numerous NGO reports, which Alston deemed "utterly credible" (Reftels E and F). Alston told us that military and police officials had rejected all allegations and engaged in only the most cursory and self-serving of investigations. Indeed, the report calls the police investigation of allegations of human rights abuses in the Mt. Elgon operation "a whitewash." He told us that while the military stated it had investigated and found the allegations baseless, the Chief of General Staff of the Kenyan Armed Forces admitted that the Army had not made a written report of its investigation.

18. (C) Alston's report strongly criticized the behavior police, military, and government officers for harassment of witnesses and civil society representatives during his visit to Mt. Elgon. According to Alston, a District Officer told a group of internally displaced persons living in a camp supported by the GOK that those giving adverse testimony regarding government forces to the Special Rapporteur would lose their food aid. Alston's staff relayed information to

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poloff that two Assistant Chiefs (who are civil servants) and Administration Police personnel told four Mt. Elgon human rights defenders who facilitated Alston's visit that any testimony against the government would have consequences. The four have subsequently fled the Mt. Elgon region and three have fled to Uganda in fear of their safety. (Note: The three will reevaluate whether it is safe to return to Kenya in approximately one month. If it is unsafe, they may approach the U.S. or other western embassies for asylum. End Note)

Post-Election Violence

19. (C) Alston stated his full support for the conclusions of the Waki Commission, and supported the establishment of a Special Tribunal for Kenya (Reftels B, C, and D). Alston's report supports the establishment of a Special Tribunal to provide justice on a broad scale. However, his reports suggested that the International Criminal Court (ICC) should also be involved, as the body of evidence available is significant and could likely support indictments much more quickly than in other ICC cases. Alston confided to the Ambassador that he hoped he could prod the ICC Chief Prosecutor into action and that, if the ICC began investigating, it might also focus Kenyan politicians on establishing a Special Tribunal.

KEY RECOMMENDATIONS

110. The Special Rapporteur's report made the following key recommendations:

-- The President of Kenya should acknowledge the widespread problem of extrajudicial killings in Kenya and the need for sweeping police reforms.

-- The President should immediately dismiss Police Commissioner Hussein Ali.

-- A truly independent civilian police oversight body with the resources to investigate and initiate prosecutions against police responsible for abuses should be established.

-- Police should institute a central tracking system for police killings in Nairobi. Complete statistics of police killings should be made public on a monthly basis.

-- The Attorney General should resign immediately.

-- Across the board vetting of the current police force, as part of the comprehensive police reform proposed by the Waki Commission (Reftel D).

-- Establishment of an Independent Commission for Mt. Elgon to investigate human rights abuses from 2005-2008.

-- Establishment of a Witness Protection Program independent of the security forces and the Office of the Attorney General.

-- The GOK should pay compensation to families of the victims unlawfully killed by police and other security forces.

THE REACTION

11. (C) Alston's report has dominated media coverage and public debate. Public reaction to the report has been overwhelmingly positive, although Alston's call for the President to fire the Police Commissioner and for the Attorney General to resign has raised some concerns about foreign meddling. Chief Government Parliamentary Whip George Thuo (Ethnic Kikuyu, from Central Province) told poloff that he had been a guest on a Kikuyu-language radio call in show and began to take issue with Alston's call for sacking of Ali and Wako. However, Thuo stated he quickly changed his tune as the vast majority of callers supported the report. The Office of the Government Spokesman foolishly issued a statement completely rejecting the report, and accused Alston of exceeding his mandate, acting in bad faith, and impinging on Kenyan sovereignty. The GOK subsequently stated that it will seriously consider the report. Minister of Justice Martha Karua has accepted the report, stating that

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extrajudicial killings are part of reform agenda that Kenya's leaders agreed to tackle under the National Accord and Reconciliation mediation process brokered by Kofi Annan. Civil society welcomed the report and backed calls for the resignation of Ali and Wako.

COMMENT:

12. (C) Alston will present his final report to the UN Human Rights Council (HRC) in June. However, he told the Ambassador that it was unlikely to be debated, given the HRC's ineffectiveness. Alston also expressed his hope that donor countries, and particularly the U.S., would use the report to pressure the GOK to undertake needed reforms to end impunity.

We support the conclusions of the Special Rapporteur, which reinforce the conclusions of post's human rights report for 2008. While we accept that the Police Commissioner and the Attorney General are major obstacles to reform, we have reservations about the efficacy of calling for their dismissal, which could backfire. Ali's contract is up in March and President Kibaki might decide to extend his

contract for another five years, lest it appear that Kibaki is acceding to the Alston's demand. On February 26, the Ambassador signed a joint heads of mission statement and participated in a press conference with the LIMID-P group supporting Alston's report (although not explicitly calling for the removal of either Ali or Wako) and calling on the GOK to establish the Special Tribunal for Kenya (Reftel A). The Ambassador also called attention to the Human Rights Report for Kenya released on February 25. We will continue to reach out to the highest levels of the GOK to push for police reform and an end to impunity. End Comment.

RANNEBERGER